

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SHYRIAA HENDERSON, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

UNITED STATES AID FUNDS, INC. D/B/A  
USA FUNDS,

Defendants.

Case No. 13cv1845-L (BLM)

**CASE MANAGEMENT CONFERENCE  
ORDER REGULATING DISCOVERY  
AND OTHER PRETRIAL  
PROCEEDINGS**

(Fed. R. Civ. P. 16)  
(Local Rule 16.1)  
(Fed. R. Civ. P. 26)

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a telephonic Case Management Conference was held on December 18, 2013. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing,

**IT IS HEREBY ORDERED:**

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before **February 14, 2014**.

2. Any motion for class certification must be filed on or before **June 20, 2014**.

3. Each party shall serve on all opposing parties a list of experts, whom that party expects to call at trial, on or before **May 23, 2014**. Each party may supplement its designation in response to the other party's designation no later than **June 27, 2014**. Expert designations

1 shall include the name, address, and telephone number of each expert and a reasonable summary  
2 of the testimony the expert is expected to provide. The list shall also include the normal rates the  
3 expert charges for deposition and trial testimony.

4 The parties must identify any person who may be used at trial to present evidence pursuant  
5 to Rules 702, 703 or 705 of the Federal Rules of Evidence. This requirement is not limited to  
6 retained experts.

7 **Please be advised that failure to comply with this section or any other discovery**  
8 **order of the Court may result in the sanctions provided for in Fed. R. Civ. P. 37,**  
9 **including a prohibition on the introduction of experts or other designated matters in**  
10 **evidence.**

11 4. All expert disclosures required by Fed. R. Civ. P. 26(a)(2) shall be served on all  
12 parties on or before **August 29, 2014**. Any contradictory or rebuttal information shall be  
13 disclosed on or before **September 26, 2014**. In addition, Fed. R. Civ. P. 26(e)(2) imposes a  
14 duty on the parties to supplement the expert disclosures made pursuant to Fed. R. Civ. P.  
15 26(a)(2)(B) by the time that pretrial disclosures are due under Fed. R. Civ. P. 26(a)(3) (discussed  
16 below).

17 The parties are advised to consult with Fed. R. Civ. P. 26(a)(2) regarding expert  
18 disclosures. Such disclosures shall include an expert report, all supporting materials, a complete  
19 statement of all opinions to be expressed and the basis and reasons therefor, the data or other  
20 information considered by the expert in forming the opinions, any exhibits to be used as a  
21 summary of or support for the opinions, the qualifications of the witness including a list of all  
22 publications authored by the witness within the preceding ten years, the compensation to be paid  
23 for the study and testimony, and a list of other cases in which the witness has testified as an  
24 expert at trial or by deposition within the preceding four years.

25 This disclosure requirement applies to all persons retained or specially employed to provide  
26 expert testimony or whose duties as an employee of the party regularly involve the giving of  
27 expert testimony.

28 **Please be advised that failure to comply with this section or any other discovery**

1 **order of the Court may result in the sanctions provided for in Fed. R. Civ. P. 37,**  
 2 **including a prohibition on the introduction of experts or other designated matters in**  
 3 **evidence.**

4 5. All discovery shall be completed by all parties on or before **November 21, 2014.**  
 5 "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure,  
 6 and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance  
 7 of the cut-off date, so that it may be completed by the cut-off date, taking into account the times  
 8 for service, notice, and response as set forth in the Federal Rules of Civil Procedure.

9 Counsel shall promptly and in good faith meet and confer with regard to all discovery  
 10 disputes in compliance with Federal Rule of Civil Procedure 37(a)(1) and Civil Local Rule 26.1(a).  
 11 **All discovery motions shall be filed within thirty (30) days after counsel have met and**  
 12 **conferred and reached an impasse with regard to any particular discovery issue, but**  
 13 **in no event shall discovery motions be filed more than sixty (60) days after the date**  
 14 **upon which the event giving rise to the discovery dispute occurred.** For oral discovery,  
 15 the event giving rise to the discovery dispute is the completion of the transcript of the affected  
 16 portion of the deposition. For written discovery, the event giving rise to the discovery dispute is  
 17 either the service of the response, or, if no response was served, the initial date the response was  
 18 due. **In addition, all discovery motions must be filed within thirty (30) days after the**  
 19 **close of discovery.**

20 6. All other pretrial motions must be filed on or before **December 19, 2014.** Motions  
 21 will not be heard or calendared unless counsel for the moving party has obtained a motion hearing  
 22 date from the law clerk of the judge who will hear the motion. Failure to timely request a motion  
 23 date may result in the motion not being heard.

24 Questions regarding this case should be directed to the judge's law clerk. Prior to  
 25 contacting chambers, the parties shall consult Judge Lorenz's Standing Order in Civil Cases, which  
 26 is accessible via the "Chambers' Rules" section of the Southern District of California's website. The  
 27 Court draws the parties' attention to Local Rule 7.1(e)(4) which requires that the parties allot  
 28 additional time for service of motion papers by mail. Papers not complying with this rule shall not

1 be accepted for filing.

2 Briefs or memoranda in support of or in opposition to any pending motion shall not exceed  
3 twenty-five (25) pages in length without leave of the judge who will hear the motion. No reply  
4 memorandum shall exceed ten (10) pages without leave of the judge who will hear the motion.

5 7. Pursuant to Local Rule 7.1(f)(3)(c), **if an opposing party fails to file opposition**  
6 **papers in the time and manner required by Local Rule 7.1(e)(2), that failure may**  
7 **constitute a consent to the granting of a motion or other request for ruling by the**  
8 **Court.** Accordingly, all parties are ordered to abide by the terms of Local Rule 7.1(e)(2) or  
9 otherwise face the prospect of any pretrial motion being granted as an unopposed motion  
10 pursuant to Local Rule 7.1(f)(3)(c).

11 8. Should either party choose to file or oppose a motion for summary judgment or  
12 partial summary judgment, no Separate Statement of Disputed or Undisputed Facts is required.

13 9. A Mandatory Settlement Conference shall be conducted on **July 9, 2014 at 9:30**  
14 **a.m.** in the chambers of Magistrate Judge Barbara L. Major located at **333 West Broadway,**  
15 **Suite 1110, San Diego, CA 92101.** All discussions at the Mandatory Settlement Conference  
16 will be informal, off the record, privileged, and confidential. Counsel for any non-English speaking  
17 party is responsible for arranging for the appearance of an interpreter at the conference.

18 a. **Personal Appearance of Parties Required:** All parties, adjusters for  
19 insured defendants, and other representatives of a party having full and complete authority to  
20 enter into a binding settlement, as well as the principal attorneys responsible for the litigation,  
21 must be present **in person** and legally and factually prepared to discuss settlement of the case.  
22 Counsel appearing without their clients (whether or not counsel has been given settlement  
23 authority) will be cause for immediate imposition of sanctions and may also result in the  
24 immediate termination of the conference.

25 Unless there is good cause, persons required to attend the conference pursuant to this  
26 Order shall not be excused from personal attendance. **Requests for excuse from attendance**  
27 **for good cause shall be made in writing at least three (3) court days prior to the**  
28 **conference.** Failure to appear **in person** at the Mandatory Settlement Conference will be

1 grounds for sanctions.

2           b. **Full Settlement Authority Required:** In addition to counsel who will try  
 3 the case, a party or party representative with full settlement authority<sup>1</sup> must be present for the  
 4 conference. In the case of a corporate entity, an authorized representative of the corporation who  
 5 is not retained outside counsel must be present and must have discretionary authority to commit  
 6 the company to pay an amount up to the amount of Plaintiff's prayer (excluding punitive damages  
 7 prayers). The purpose of this requirement is to have representatives present who can settle the  
 8 case during the course of the conference without consulting a superior. Counsel for a government  
 9 entity may be excused from this requirement so long as the government attorney who attends the  
 10 Mandatory Settlement Conference (1) has primary responsibility for handling the case, and (2)  
 11 may negotiate settlement offers which the attorney is willing to recommend to the government  
 12 official having ultimate settlement authority.

13           c. **Confidential Settlement Statements Required:** No later than **July 2,**  
 14 **2014,** the parties shall submit directly to Magistrate Judge Major's chambers (via hand delivery  
 15 or email address efile\_major@casd.uscourts.gov) confidential settlement statements no more than  
 16 five (5) pages in length. **These confidential statements shall not be filed or served on**  
 17 **opposing counsel.** Each party's confidential statement must include the following:

18                   (i) A brief description of the case, the claims and/or counterclaims  
 19 asserted, and the applicable defenses or position regarding the asserted claims;

20                   (ii) A specific and current demand or offer for settlement addressing all  
 21 relief or remedies sought. If a specific demand or offer for settlement cannot be made at the time  
 22 the brief is submitted, then the reasons therefore must be stated along with a statement as to  
 23 when the party will be in a position to state a demand or make an offer; and

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24  
 25           <sup>1</sup> "Full settlement authority" means that the individuals at the settlement conference must be authorized to  
 26 explore settlement options fully and to agree at that time to any settlement terms acceptable to the parties. Heileman  
 27 Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered discretion  
 28 and authority" to change the settlement position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D.  
 Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference  
 contemplates that the person's view of the case may be altered during the face to face conference. Id. at 486. A  
 limited or a sum certain of authority is not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th  
 Cir. 2001).

(iii) A brief description of any previous settlement negotiations, mediation sessions, or mediation efforts.

General statements that a party will "negotiate in good faith" is not a specific demand or offer contemplated by this Order. It is assumed that all parties will negotiate in good faith.

d. **Requests to Continue a Mandatory Settlement Conference:** Any request to continue the Mandatory Settlement Conference or request for relief from any of the provisions or requirements of this Order must be sought by a **written ex parte application.** The application must (1) be supported by a declaration of counsel setting forth the reasons and justifications for the relief requested, (2) confirm compliance with Civil Local Rule 83.3(h), and (3) report the position of opposing counsel or any unrepresented parties subject to the Order. **Absent good cause, requests for continuances will not be considered unless submitted in writing no less than seven (7) days prior to the scheduled conference.**

**If the case is settled in its entirety before the scheduled date of the conference, counsel and any unrepresented parties must still appear in person, unless a written joint notice confirming the complete settlement of the case is filed no fewer than twenty-four (24) hours before the scheduled conference.**

10. The parties must comply with the pretrial disclosure requirements of Fed. R. Civ. P. 26(a)(3) no later than **March 16, 2015**. The parties should consult Fed. R. Civ. P. 26(a)(3) for the substance of the required disclosures.

**Please be advised that failure to comply with this section or any other discovery order of the Court may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on the introduction of designated matters in evidence.**

11. Despite the requirements of Local Rule 16.1(f), neither party is required to file Memoranda of Contentions of Fact and Law at any time. The parties shall instead focus their efforts on complying with their pretrial disclosure requirements under Fed. R. Civ. P. 26(a)(3) and drafting and submitting a proposed pretrial order by the time and date specified in Local Rule 16.1(f)(6).

11. Counsel shall confer and take the action required by Local Rule 16.1(f)(4) on or

1 before **March 23, 2015**. At this meeting, counsel shall discuss and attempt to enter into  
2 stipulations and agreements resulting in simplification of the triable issues. Counsel shall  
3 exchange copies and/or display all exhibits other than those to be used for impeachment, and lists  
4 of witnesses and their addresses including experts who will be called to testify. The exhibits shall  
5 be prepared in accordance with Local Rule 16.1(f)(2)(c). Counsel shall cooperate in the  
6 preparation of the proposed final pretrial conference order.

7 12. The proposed final pretrial conference order, including written objections, if any, to  
8 any party's Fed. R. Civ. P. 26(a)(3) pretrial disclosures, shall be prepared, served, and lodged with  
9 Judge Lorenz's chambers on or before **April 6, 2015** and shall be in the form prescribed in and  
10 in compliance with Local Rule 16.1(f)(6). Any objections shall comply with the requirements of  
11 Fed. R. Civ. P. 26(a)(3). **Please be advised that the failure to file written objections to**  
12 **a party's pretrial disclosures may result in the waiver of such objections, with the**  
13 **exception of those made pursuant to Rules 402 (relevance) and 403 (prejudice,**  
14 **confusion or waste of time) of the Federal Rules of Evidence.**

15 13. The final pretrial conference is scheduled on the calendar of the Honorable M. James  
16 Lorenz on **April 13, 2015** at **11:00 a.m.** The trial date will be assigned by Judge Lorenz at the  
17 pretrial conference.

18 14. The dates and times set forth herein will not be modified except for good cause  
19 shown.

20 15. Plaintiff's(s') counsel shall serve a copy of this order on all parties that enter this  
21 case hereafter.

22 **IT IS SO ORDERED.**

23  
24 DATED: December 20, 2013

25 

26 BARBARA L. MAJOR  
27 United States Magistrate Judge  
28